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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/762,266

01/23/2004

Robert Chaput

CHAPUT2

5788

7590

05/09/2006

EXAMINER

CECIL, TERRY K

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CANADA

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/762,266

**Applicant(s)**

CHAPUT, ROBERT

**Examiner**

Mr. Terry K. Cecil

**Art Unit**

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2 is/are rejected.
- 7) ☒ Claim(s) 3-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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*Note that the references cited in the specification have also been cited by the examiner on the attached form 892.*

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because of the following:
  - Figures 1-2 and 10 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated: *as explained in applicant's disclosure (e.g. the Brief Description of the Drawings" section), only conventional canning jars—without the applicant's invention—are shown.* See MPEP § 608.02(g).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The disclosure is objected to because of the following:
- The abstract of the disclosure is objected to because it contains legal terminology, e.g. “said” and “means”. See MPEP § 608.01(b).

Appropriate correction is required.

***Claim Objections***

3. Claims 3-5 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only (claim 3) and a multiple dependent claim cannot depend from any other multiple dependent claim (claim 5). See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is indefinite because of the following reasons: (i) the antecedent of “the firmness in material” is unclear and (ii) since the food afloat in the fluid is not part of the strainer and the buoyant force thereof is not defined, it is unclear how this limitation further defines the strainer of claim 1.

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***Claim Rejections - 35 USC § 103***

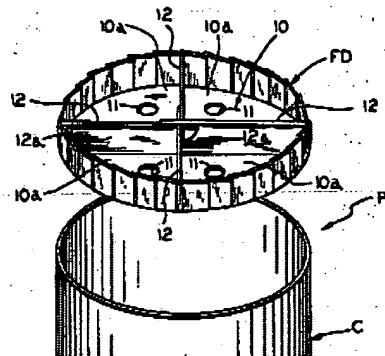
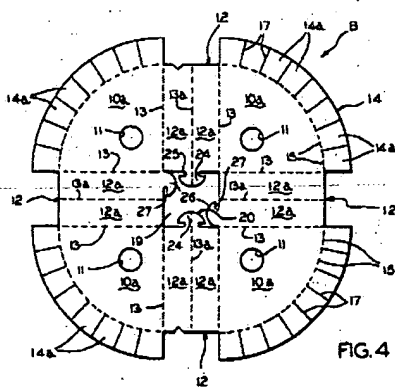
6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-2 rejected under 35 U.S.C. 103(a) as being unpatentable over Tuitt (U.S. 4,427,125) in view of ordinary skill in the art OR in view of Wetsler (U.S. 1,353,104). Tuitt teaches a stainer that includes a plurality of incisions 17 about its periphery, integral pull tabs 12



and cutouts 11. Tuitt doesn't teach the cutouts 11 to be crescent-shaped but such is considered to be within ordinary skill and a matter of design preference. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Alternately, such crescent-shaped cutouts are taught by Wetsler. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the

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invention to have the cutouts 4 of Wetsler in the invention of Tuitt, since Wetsler teaches the benefit of "hand holes" in an apparatus that is also used to keep food products below a liquid level in a container.

8. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wetsler (U.S. 1,353,104) in view of Lagorio (U.S. 1,948,353). Wetsler teaches a strainer for keeping pickled foods below a liquid level. The strainer includes a central hole and crescent-shaped holes 4.

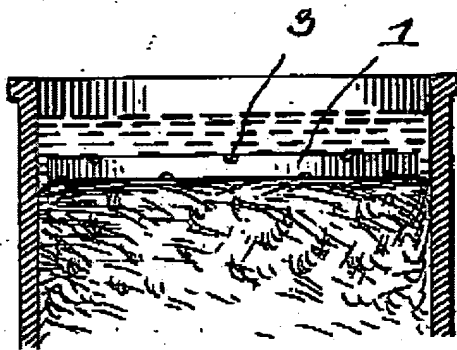


Fig. 1.

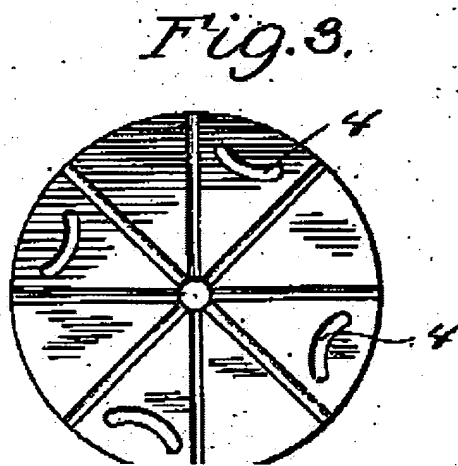
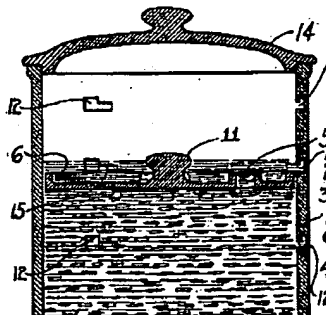


Fig. 3.

As seen in figure 1, a plurality of "incisions" 3 are located circumferentially around the disk.



Wetsler doesn't teach integral pull tabs. However, such is taught by Lagorio. As shown in his figures, Lagorio teaches a handhold 11. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the hand hold of Lagorio in the strainer of Wetsler, in order to have the benefit of a

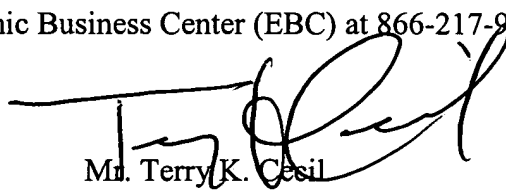
means for removing the strainer from the container. Having a plurality of holds is within ordinary skill in order to use both hands in instances where the strainer is larger and heavy.

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Also, it has been decided that duplication of parts is within ordinary skill, see *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

9. Contact Information:

- Examiner Mr. Terry K. Cecil can be reached at (571) 272-1138 at the Carlisle campus in Alexandria, Virginia for any inquiries concerning this communication or earlier communications from the examiner. Note that the examiner is on the increased flextime schedule but can normally be found in the office during the hours of 8:30a to 4:30p, on at least four days during the week M-F.
- Wanda Walker, the examiner's supervisor, can be reached at (571) 272-1151 if attempts to reach the examiner are unsuccessful.
- The Fax number for this art unit for official faxes is (571) 273-8300.
- Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mr. Terry K. Cecil  
Primary Examiner  
Art Unit 1723

TKC  
May 5, 2006